

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOIRA KELLY,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	No. 00-CV-32
	:	
DECISIONONE CORPORATION,	:	
	:	
Defendant.	:	

MOIRA KELLY,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	No. 00-CV-968
	:	
WILLIAM BEAUMONT and KARL WYSS,	:	
	:	
Defendants.	:	

M E M O R A N D U M

BUCKWALTER, J.

December 6, 2000

Presently before this Court is a Motion for Summary Judgment on behalf of defendants, DecisionOne Corporation ("DecisionOne"), William Beaumont ("Beaumont") and Karl Wyss ("Wyss") (collectively "Defendants").

Plaintiff Moira Kelly brought this suit under the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2611 et seq. and the Pennsylvania Wage Payment and Collection Law ("WPCL"), 43 Pa. Con. Stat. Ann. § 260.1 et seq. alleging that she was terminated from her job and was entitled to receive enhanced severance

benefits under her employment contract. For the reasons set forth below, Defendants' Motion for Summary Judgment will be granted.

I. BACKGROUND

Plaintiff requested and received maternity leave from her employer, DecisionOne. When she asked for an extension of this leave, DecisionOne again granted her request. As required by FMLA, DecisionOne also informed her by letter on November 9, 1999 (hereafter "November 9 letter") that she was a key employee under the terms of FMLA and consequently, her position could be filled permanently during her leave.

Plaintiff received this notification and inferred that she was terminated. Plaintiff replied to DecisionOne in writing and demanded the severance benefits to which she would be entitled under her employment contract in the event of termination. DecisionOne responded both by letter and by telephone explaining to Plaintiff that she had not been terminated and encouraging her return to the company when her leave ended. Nonetheless, Plaintiff filed this action to obtain her benefits.

II. LEGAL STANDARD

A motion for summary judgment shall be granted where all of the evidence demonstrates "that there is no genuine issue

as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Id.

If the moving party establishes the absence of the genuine issue of material fact, the burden shifts to the nonmoving party to "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

When considering a motion for summary judgment, a court must view all inferences in a light most favorable to the nonmoving party. See United States v. Diebold, 369 U.S. 654, 655 (1962). The nonmoving party, however, cannot "rely merely upon bare assertions, conclusory allegations or suspicions" to support its claim. Fireman's Ins. Co. v. DeFresne, 676 F.2d 965, 969 (3d Cir. 1982). To the contrary, a mere scintilla of evidence in support of the non-moving party's position will not suffice; there must be evidence on which a jury could reasonably find for the nonmovant. Liberty Lobby, 477 U.S. at 252. Therefore, it is plain that "Rule 56(c)" mandates the entry of summary judgment,

after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In such a situation, "[t]he moving party is 'entitled to a judgment as a matter of law' because the non-moving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Id. at 323 (quoting Fed. R. Civ. P. 56(c)).

III. DISCUSSION

A. Plaintiff's Claim Against DecisionOne

Employees who take leave under FMLA are entitled to return to their positions after their leave ends. See 29 U.S.C. § 2614 (a). However, the act makes an exception for highly compensated "key" employees, particularly where an employee's prolonged absence would cause "substantial and grievous economic injury." 29 U.S.C. § 2614 (b). When a key employee takes leave, an employer may fill the vacated position in the employee's absence, but the employer must advise the employee of this intent. Id. This notification does not constitute termination as the employee is still entitled to work for the employer but the individual's original position may no longer be available. In the instance that the employee is terminated and the employer

refuses to pay outstanding benefits or wages, then the employee may invoke WPCL to help enforce his or her contract rights. See 43 Pa.Con. Stat. Ann. § 260.5(a).

Here, it is undisputed that Plaintiff was a key employee,¹ and DecisionOne was experiencing a period of financial hardship.² In light of the evidence provided regarding Plaintiff's role in the company, it seems reasonable for DecisionOne to believe that Plaintiff's prolonged absence could cause a "substantial and grievous economic injury." See 29 C.F.R. § 825.218 (b) and (c) (offering guidance in making such determinations).

When DecisionOne granted Plaintiff extended leave, it notified Plaintiff by letter, as required under FMLA, of potential consequences of this extension. Plaintiff alleges this letter was actually intended to terminate her. In support of this claim, she offers deposition testimony suggesting that some of DecisionOne's agents may have sought her dismissal. However, this evidence is insufficient because to survive a motion for summary judgment, Plaintiff must demonstrate that DecisionOne actually terminated her not merely that it considered such action.

1. Her salary placed her in the top ten percent of DecisionOne employees.

2. DecisionOne filed for bankruptcy not long after this incident.

Moreover, even on its face, the letter did not terminate Plaintiff. By granting her extended leave, DecisionOne kept Plaintiff in its employment under the FMLA until January 4, 2000, when the extended leave expired. Therefore, at the time of the November 9 letter, no severance of Plaintiff's employment had occurred, and consequently, Plaintiff failed to meet a condition of eligibility for receipt of severance benefits.

Additionally, DecisionOne provided ample evidence that it did not intend to terminate Plaintiff with the November 9 letter. As described supra, DecisionOne promptly communicated with Plaintiff at least once by telephone and at least twice by letter to reassure her that she was not being terminated. Moreover, the November 9 letter stated that Plaintiff was welcome to "request reinstatement" at the end of her leave, but DecisionOne could not guarantee that her original position would be available. Ultimately, however, DecisionOne invited Plaintiff to return to her original job as the position was still vacant when Plaintiff's leave concluded. Plaintiff declined this offer.

In light of Plaintiff's employment status under a grant of extended leave and DecisionOne's efforts to reassure Plaintiff that she was not terminated, Plaintiff cannot support a claim that DecisionOne ended her employment. Consequently, as Plaintiff was not terminated at the time of the November 9 letter, she was not entitled to enhanced severance benefits.

Therefore, Plaintiff has no grounds for invoking WPCL, and summary judgment will be granted on behalf of DecisionOne as to DecisionOne's alleged violation of both FMLA and WPCL.

B. Liability of Individual Defendants Beaumont and Wyss

Plaintiff asserts that these corporate officers, Beaumont and Wyss, should be held liable for violation of FMLA and WPCL under the same theory as DecisionOne. As discussed supra, neither DecisionOne nor its employees acted improperly in its handling of Plaintiff's request for an extended leave of absence under FMLA. Hence, there is no misconduct for which these individual employees can be held liable. For this reason, the motion for summary judgment as to this claim will be granted.

C. Plaintiff's Request for Payment of Outstanding Commissions

Plaintiff alleges she is entitled to commissions earned prior to her leave of absence but which were paid during her absence. However, Plaintiff fails to provide any evidence of those commissions and declines to respond to this issue in her response to Defendants' motion for summary judgment. In the absence of any evidence proving the existence of these allegedly owed commissions, this Court will grant summary judgment on behalf of Defendants as to this claim.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion for Summary Judgment is GRANTED.

An appropriate order follows.

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WILLIAM BEAUMONT and KARL WYSS,	:	
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O R D E R

AND NOW, this 6th day of December, 2000, upon consideration of Defendants' Motion for Summary Judgment (Docket No. 10), Plaintiff's response thereto (Docket No. 11) and Defendants' Reply Memorandum (Docket No. 12), it is hereby ORDERED that Defendants' motion is **GRANTED** in its entirety.

For the foregoing reasons, judgment is entered on behalf of all defendants and against plaintiff.

This case is **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.